

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DOCKET NO. 3:10CR161-MOC

UNITED STATES OF AMERICA)	
)	
v.)	FINAL ORDER AND
)	JUDGMENT CONFIRMING
MICHAEL J. FOLEY.)	FORFEITURE

THIS MATTER is before the Court on the Government's Consent Motion for Final Order and Judgment Confirming Forfeiture (Doc. 37).

On September 1, 2010, this Court issued a Consent Order and Judgment of Forfeiture (Doc. 8) for assets and a forfeiture money judgment identified by the Government and Defendant. The Consent Order contained a finding that Defendant has or had a legal interest in the forfeited property. The Consent Order was signed by Government counsel, Defendant, and defense counsel, as well as by Defendant's spouse, Kathryn Foley. This Court also issued two subsequent orders for forfeiture (Docs. 14 and 17) of funds in lieu of some real properties identified in the Consent Order.

The Government advises that the Consent Order and two subsequent orders ultimately resulted in the seizure of or filing of lis pendens against the following assets:

Approximately \$22,272.23 in funds derived from all accounts at American Community¹ Bank in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers ending: xxxx0360; xxxxxx7848; and xxxx0318;

Approximately \$21,090.72 in funds derived from all accounts at

¹ Due to a typographical error, American Community Bank was described as "American Commercial Bank" in the Consent Order. However, the seized funds were derived from American Community Bank and the Government published notice of forfeiture of accounts at American Community Bank, not American Commercial Bank.

Fifth Third Bank in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers ending XXXXX2702;

Approximately \$220,585.76 in funds derived from all accounts at UBS in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers xxxx3283 and xxx9314;

Approximately \$1,755.38 in funds derived from all accounts at E*Trade in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers ending xxxx2657 and xxxx4084;

Approximately \$22,346.94 in funds derived from the balance of funds in excess of \$10,000 in all accounts at HSA Bank in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers ending xxxx7300;

The real property at 18585 Vineyard Point Lane, Cornelius, NC, more particularly described as Parcel Number 00146154;

The real property at 6811 Fieldlark Trail, Charlotte, NC, more particularly described as Parcel Number 19707312;

The real property at 5920 McGregor Drive, Charlotte, NC, more particularly described as Parcel Number 08321041;

The real property at 6534 Danbrook Park, Charlotte, NC, more particularly described as Parcel Number 13720108;

The real property at 109 James Drew Court, Charlotte, NC, more particularly described as Parcel Number 21314140;

The real property at 2665 Shelburne Place, Charlotte, NC, more particularly described as Parcel Number 19505411;

The real property at Lot 20, Holland Avenue, Charlotte, NC, more particularly described as Parcel Number 07707410;

Approximately \$26,510.10 in funds as a substitute res for the real property at Unit 634, Baywatch; North Myrtle Beach, SC, Parcel Number 1560326150;

Approximately \$273,066.84 in funds as a substitute res for the real properties at Unit 1009 and Unit 1010, Prince Resort, North Myrtle Beach, SC, Parcel Numbers 1450611086 and 1450611087;

A 2005 Lexus RX330 SUV automobile, VIN Number 2T2GA31U45C025555;

One 2003 Bennington pontoon boat, Model 2050RL, Serial Number NC4638CW; and

An additional \$15,000 from what was previously held as cash.

As reflected in the docket in this case, which includes declarations of publication (Docs. 12, 12-1, 15, 15-1, 19, 19-1, 36, and 36-1) and copies of Certified Mail Receipts that are attached to the Government's Consent Motion, the Government has published notice of the forfeiture orders and provided notice via United States mail. The time period in which third parties may file petitions has passed and no third parties have filed petitions. Consequently, in accordance with Rule 32.2(c)(2), the Court may now enter a Final Order and Judgment Confirming Forfeiture giving the United States clear title to the forfeited assets.

The Government advises the Court that, in negotiating and agreeing to the Consent Order, the parties had intended that tax penalties of liquidation of the Health Savings Account should be paid prior to distribution of liquidation proceeds to the Government. However, such tax penalties were not paid prior to liquidation and Defendant has now advised the Government that a \$2,160 tax penalty related to the HSA has been incurred by Defendant. The Government agrees that \$2,160 should be returned to Defendant.

IT IS THEREFORE ORDERED THAT, since notice of forfeiture has appropriately been provided and timely petitions have not been filed, since the parties have agreed to forfeiture specific assets on the grounds set forth in the Consent Order and less the \$2,160 that the

Government agrees should be returned to Defendant, and since Fed. R. Crim. P. 32.2(c)(2) provides for issuance of a final order under such circumstances, this order shall constitute a Final Order and Judgment Confirming Forfeiture for the following assets for disposition according to law:

Approximately \$22,272.23 in funds derived from all accounts at American Community Bank in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers ending: xxxx0360; xxxxxx7848; and xxxx0318;

Approximately \$21,090.72 in funds derived from all accounts at Fifth Third Bank in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers ending XXXXX2702;

Approximately \$220,585.76 in funds derived from all accounts at UBS in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers xxxx3283 and xxx9314;

Approximately \$1,755.38 in funds derived from all accounts at E*Trade in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers ending xxxx2657 and xxxx4084;

Approximately \$20,186.94² in funds derived from the balance of funds in excess of \$10,000 in all accounts at HSA Bank in the sole or joint name of Michael J. Foley, Mike Foley, Inc., or Builder Resource Group. These accounts include, but are not limited to account numbers ending xxxx7300;

The real property at 18585 Vineyard Point Lane, Cornelius, NC, more particularly described as Parcel Number 00146154;

The real property at 6811 Fieldlark Trail, Charlotte, NC, more

² Pursuant to the agreement of the Government and Defendant as stated in the Consent Motion, the Government shall return the remaining \$2,160 not ordered finally forfeited herein back to Defendant.

particularly described as Parcel Number 19707312;

The real property at 5920 McGregor Drive, Charlotte, NC, more particularly described as Parcel Number 08321041;

The real property at 6534 Danbrook Park, Charlotte, NC, more particularly described as Parcel Number 13720108;

The real property at 109 James Drew Court, Charlotte, NC, more particularly described as Parcel Number 21314140;

The real property at 2665 Shelburne Place, Charlotte, NC, more particularly described as Parcel Number 19505411;

The real property at Lot 20, Holland Avenue, Charlotte, NC, more particularly described as Parcel Number 07707410;

Approximately \$26,510.10 in funds as a substitute res for the real property at Unit 634, Baywatch; North Myrtle Beach, SC, Parcel Number 1560326150;

Approximately \$273,066.84 in funds as a substitute res for the real properties at Unit 1009 and Unit 1010, Prince Resort, North Myrtle Beach, SC, Parcel Numbers 1450611086 and 1450611087;

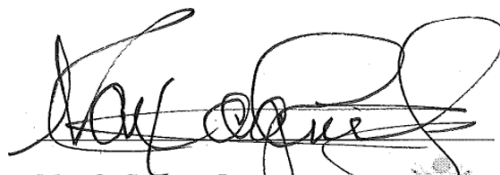
A 2005 Lexus RX330 SUV automobile, VIN Number 2T2GA31U45C025555;

One 2003 Bennington pontoon boat, Model 2050RL, Serial Number NC4638CW; and

An additional \$15,000 from what was previously held as cash.

SO ORDERED.

Signed: January 23, 2012



Max O. Cogburn Jr.
United States District Judge